

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

TOM GILES *et al.*,

Defendants.

Case No. C07-5572RJB/JKA

ORDER UNSEALING A  
DOCUMENT AND  
CONVERTING A MOTION  
TO DISMISS TO A MOTION  
FOR SUMMARY JUDGMENT

This 42 U.S.C. § 1983/Bivens action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4.

Mr. Marks now litigates under a sanction as a result of improper filings. As part of that sanction documents filed by Mr. Marks are submitted under seal for court review. Mr. Marks has filed one document since the last order (Dkt. # 15). Dkt. # 15 contains is Mr. Mark's response to

1 defendant's motion to dismiss this action. **Dkt. # 15 is now UNSEALED.**

2 This action involves allegations that the conditions of confinement in segregation are  
3 unconstitutional as mentally ill persons are housed with others. Plaintiff alleges the mentally ill  
4 persons are creating unconstitutional conditions with noise and their acting out; including flooding of  
5 cells and smearing of fecal matter.

6 Plaintiff alleges he was improperly placed in segregation, that his placement in segregation  
7 was retaliation for his litigation, and that he has been discriminated against. Review of the motion to  
8 dismiss reveals that defendants have included documents outside of the pleadings, including infraction  
9 reports and documents from plaintiff's disciplinary hearing. The proper procedure for the court is to  
10 either convert the motion to dismiss to a motion for summary judgment or not to consider the  
11 documents outside the complaint.

12 If a motion to dismiss is converted to a motion for summary judgment the parties must be  
13 given notice and an opportunity to amend or supplement the filings. Graux v. Pulley, 739 F.2d 437  
14 (9th Cir. 1984). The Court now finds and Orders:

- 15 (1) The motion to dismiss will be considered as a motion for summary  
16 judgment. The defendant should submit any additional briefing or  
17 exhibits they wish by MAY 16, 2008. Plaintiff may file a response by  
MAY 30, 2008. a reply will be due one week after the response has  
been unsealed.
- 18 (2) Neither party has addressed the conditions of confinement in  
19 segregation. Plaintiff has admitted to swearing at Officer Giles during  
20 a discussion of a grievance. This discussion took place in the unit and  
21 officer Giles alleges he was forced to leave the area until the situation  
de-escalated. Given plaintiff's admission to swearing at the officer, the  
court is less concerned with the reason for placement in segregation  
than with the conditions in that are alleged in the complaint.
- 22 (3) The clerk is directed to send copies of this order to plaintiff and  
23 counsel for Defendants.

24 DATED this 9 day of April, 2008.

25  
26 /S/ J. Kelley Arnold  
J. Kelley Arnold  
27 United States Magistrate